



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 2200-98
20 December 1999



Dear [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 16 December 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by a designee of the Specialty Advisor for Orthopedic Surgery dated 1 June 1999, and the Head, Enlisted Retirement Branch, naval Personnel Center, dated 7 September 1999, and the information you submitted in rebuttal thereto. A copy of each opinion is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinions. The Board was unable to conclude that you unfit by reason of physical disability at the time of your discharge. In addition, it noted you did not have sufficient active duty service to qualify for retirement under the Temporary Early Retirement Authority. The Board could not find any indication in the available records that you contested your discharge, or that you were denied due process in connection with your discharge. In addition, it noted that "overheight" may be utilized as a basis for the discharge of career designated service members; it is not reserved for first term enlistees. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new

and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY

**NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000**

1830
Pers823
Ser 678
7 Sep 1999

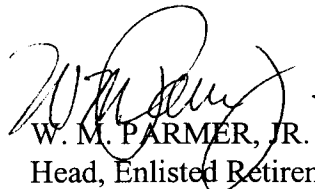
**MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS**

Subj: COMMENTS AND RECOMMENDATIONS ICO OSI [REDACTED]
[REDACTED]

Ref: (a) Pers-00XCB ltr of 5 Aug 1999

Encl: (1) BCNR File with Microfiche Service Record

1. Reference (a) requested comments and recommendations in subject member's case. Specifically, Petitioner requests his administrative separation be changed to retirement under the provisions of the Temporary Early Retirement Authority (TERA).
2. Review of all available records at NPC indicate that [REDACTED] did not request retirement under any authorized program prior to and during his separation processing for excessive overheight. Per NAVADMIN 126/97, a request for retirement under the provisions of the TERA program would probably have been endorsed unfavorably due to the undermanned posture of the OS rating. Review of enclosure (1), does indicate that he was active in his separation processing, per MILPERSMAN 3620200, and in fact did not object to this type of separation.
3. It is recommended that [REDACTED] petition for correction to his records be denied as stated in paragraph 2 above. Enclosure (1) is returned.


W. M. FARMER, JR.
Head, Enlisted Retirements Branch



DEPARTMENT OF THE NAVY

NAVAL HOSPITAL
2080 CHILD STREET
JACKSONVILLE, FLORIDA 32214-5000

IN REPLY REFER TO:

6300
01 Jun 99

From: CDR Donald H. Rosenbaum, MC, USN, Head, Orthopaedic Surgery Department
Naval Hospital, Jacksonville, FL 32214-5000
To: Board for Correction of Naval Records, Department of the Navy, 2 Navy Annex,
Room 2432, Washington DC 20370-5100
Via: CAPT D. Covey, Naval Hospital Bremerton, HPO 1 Boone Road, Bremerton, WA
98312-1898

Subj: MEDICAL RECORD REVIEW ICO [REDACTED]

1. On 10 March 1998, [REDACTED] requested the Board for Correction of Naval Records to convert his administrative honorable separation from naval service to a retirement. The petitioner alleges the squadron medical officer canceled an orthopaedic surgery consultation to evaluate his fitness for sea duty. As a result the member was administratively separated from the United States Navy after 15 years and nine months of service for excessive height. [REDACTED] states his chronic low back pain was a result of the low ceiling on ships and he should have been medically retired or assigned permanent shore duty.

2. [REDACTED] was administratively separated on 16 November 1997, and received separation pay of \$16,644.29. The member requested disability evaluation from the Veterans Administration and was awarded a 20% disability for degenerative L4-5 disc disease on 26 January 1998.

3. To complete this review the investigating officer has reviewed [REDACTED] personnel evaluations, OMB 0704-0003-application for correction of military record, Naval Personnel Manual Section 3620200-Separation of Enlisted Personnel by Reason of Convenience of the Government - Other than Physical or Mental Conditions, personal letters from [REDACTED] to his department head dated May 5, 1997, letter to Senator John Warner R-Virginia dated 03 Feb 98, letters to BCNR dated 06 Sep 98, 08 Dec 98, VA Rating Decision dated 26 Jan 98, and the member's DD214- Release or Discharge from Active Service.

FINDING OF FACT

1. [REDACTED] personnel evaluations repeatedly rated him as outstanding with early promotion recommendations. He received eight medals and was selected in July 1997 for the rank of Chief Petty Officer.

2. [REDACTED] had a history of lumbar pain dating from 1982 until 1997. He had numerous documented medical visits for nonradicular mechanical back pain. He has been treated

Subj: MEDICAL RECORD REVIEW ICO [REDACTED]
[REDACTED]

extensively with physical therapy, medication and activity modification. He was seen in April 1993, October 1992, August 1997, and September 1997 by four different orthopedic surgeons.

3. [REDACTED] is 79 inches tall. The member's height suitability was first discussed with the USS White Plain (AFS-4) Medical Officer in 1982. (Name illegible) The member was transferred to the USS Midway (CV-41) to accommodate his height. On 30 November 1983, a berthing modification was ordered by CAPT G. E. Hill, Senior Medical Officer, USS Midway.

4. [REDACTED] has served extensive sea time on multiple ships including USS White Plain (AFS-4), USS Midway (CV-41), USS Cowpens (CG-63), USS Cook (FF-1083) and the USS The Sullivans (DD-68).

5. While supporting the pre-commissioning of the USS The Sullivans (DD-68) in Bath, Maine. [REDACTED] was seen on 01 May 1997 in the General Medicine Clinic by [REDACTED] MC, USN at the Brunswick Naval Air Station. [REDACTED] evaluated the member's complaint of chronic low back pain and recommended an orthopedic consultation to evaluate the member for permanent shore duty.

6. [REDACTED] stated in the letter to Senator Warner R-Virginia that [REDACTED] stated that a 37 year old with his back pain was risking permanent injury by continued sea service and should be placed on permanent shore duty. There is no entry in his medical record to substantiate this statement. Medical documentation of this visit does not support this conclusion.

7. Military orthopedic consultation was immediately unavailable in Brunswick, Maine. The USS The Sullivans departed Bath, ME and arrived at homeport Mayport, FL on 05 May 1997. OS1 Bennett was ordered to report to Mayport, FL.

8. [REDACTED] consultation was reviewed by [REDACTED], RSG Mayport Ships' Medical Officer, when the member reported to the USS The Sullivans. An orthopedic consult to the Jacksonville Naval Hospital was requested on 15 May 1997. The consult was placed by the medical officer as routine and an appointment after 02 July 1997 was requested due to ship's movement. Dr. [REDACTED] requested the member be considered for separation per MILPERSMAN 3620200.

9. [REDACTED] was seen by [REDACTED] (orthopedic surgeon, Naval Hospital, Jacksonville) on 05 August 1997. This consult noted mechanical low back pain with mild left radicular symptoms. The radicular symptoms were not reproduced and the radiographs demonstrated disc space narrowing at L4-5, L5-S1. [REDACTED] stated he had experienced back pain since boot camp. The pain was aggravated by sea duty but relieved while on shore.

10. [REDACTED] did not recommend a limited duty board or physical evaluation board. [REDACTED] stated the member was unfit for shipboard duty due to height and recommended

Subj: Subj: MEDICAL RECORD REVIEW ICO [REDACTED]

administrative separation in accordance with MILPERSMAN 3620200.

11. [REDACTED] was relieved from shipboard responsibilities and placed in Medical Hold on 05 August 1997. In his letter to Senator J. Warner R-Virginia dated 03 February 1998, [REDACTED] stated the ship's executive officer was reluctant to separate the member and processing did not begin until [REDACTED] requested the orthopedic surgeon call and discuss his condition. The next orthopedic visit on 02 September notes the patient was improving but does not document this call.

CONCLUSION

1. [REDACTED] was an exemplary petty officer as noted by his evaluations and selection to Chief Petty Officer.
2. [REDACTED] had a long documented history of low back pain that was first noted in boot camp. Early in his career his suitability for service was discussed but the member continued to complete his duties in multiple sea commands.
3. According to Naval Regulations a limited duty board is utilized to allow a member time to heal with the expectation of a return to service. The maximum time a member may be placed on a limited duty board is eight months. A Physical Evaluation Board considers fitness for duty. [REDACTED] incorrectly referred the member for orthopedic evaluation for consideration of a limited duty board that would place the member in a permanent shore duty status. It is not within the purview of the Physical Evaluation Board to exempt members from sea service. Due to the chronicity of the pain, a physical evaluation board for fitness for service would have been appropriate.
4. [REDACTED] was not a surgical candidate and had maximized the nonsurgical care treatments. His condition was painful and aggravated by sea service but does not document a significant change from his initial 1982 complaints.
5. [REDACTED] did refer the patient for orthopedic evaluation. [REDACTED], orthopedic surgeon at Naval Hospital, Jacksonville recommended administrative separation as per Naval Military Personnel Manual 3620200.
6. The member accepted the administrative separation and attempted to hasten the Executive Officer (USS The Sullivans) actions to expedite his separation. This is documented in the letter written by [REDACTED] to Senator J. Warner R-Virginia. Although he had 15 years and nine months in Naval service and was selected for E7, he appeared to be active in the separation process and there is no evidence to demonstrate he disagreed with the separation.


Subj: Subj: MEDICAL RECORD REVIEW ICO OS1 [REDACTED]
[REDACTED]

7. The Veterans Administration recognized a service related degenerative lumbar pain and assigned a disability of 20%. This percentage exceeds the normal disability award provided for degenerative low back pain by the Naval Physical Evaluation Board. The 20% rating does not exceed the 30% minimum that allows member a retired military status.

RECOMMENDATION

1. The medical record does not support a claim for medical retirement. There may be an argument that the member's complaints should have been evaluated by a Physical Evaluation Board, but given the unchanged chronicity of the pain and the exemplary service it is presumed he would be found fit for duty. The medical documentation does not support a debilitating condition.

2. The Veterans Administration did rate the member with a twenty percent disability. Documentation provided does not support this rating. This amount, if accepted, does not exceed the 30% rating required for medical retirement. Therefore, it is recommended the member's claim for medical retirement be denied.


D. H. ROSENBAUM